



# **Conscientious objection: Legal practices and frameworks among EU member states**

**Presentation for the  
Subcommittee on Security and Defence  
of the European Parliament  
22 January 2009**



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# 1. Introduction

In this presentation I will give an overview of the right to conscientious objection, its legal practices and frameworks in the 27 European Union member states. Before I do so, I want to step back a bit and have a brief look at the existing international standards about the right to conscientious objection, as these standards allow us to put the practices in the EU member states into a perspective.

## ► Conscientious objection as a right

It is now accepted that the right to conscientious objection is protected under the right to freedom of thought, conscience and religion (Article 18 *International Covenant on Civil and Political Rights*, Article 9 of the *European Convention of Human Rights*), and seen as a legitimate exercise of this right<sup>1</sup>. The former United Nations Commission on Human Rights has reiterated this right in several resolutions since 1987<sup>2</sup>. If there have been any doubts in the past, then the decision of the United Nations *Human Rights Committee* from January 2007 on two individual complaints from South Korea certainly clarified the issue<sup>3</sup>. Subsequently, the United Nations *Working Group on Arbitrary Detention* classified any imprisonment of a conscientious objector as a form of arbitrary detention<sup>4</sup>, while previously it only saw the second and any subsequent imprisonment as arbitrary detention.

It is important to note that article 18(1) of the Covenant, which covers both the right to freedom of thought, conscience and religion and to manifest it, is non-derogable even during times of national emergency threatening the life of the nation.

While there has been some jurisprudence at the level of the United Nations *Human Rights Committee*, the *European Court of Human Rights* has so far shied away from ruling on the question whether article 9 of the European Convention of Human Rights includes the right to conscientious objection<sup>5</sup>. It is hard to imagine that following the Human Rights Committee decision from 23 January 2007, the ECHR would not rule in a similar manner to the Human Rights Committee in a future case.

Although the right to conscientious objection is derived from the right to freedom of thought, conscience and religion, it is clear that it is not limited to religious convictions. According to the Human Rights Committee's General Comment No 22, "article 18 protects theistic, non-theistic and atheistic beliefs". In fact, the Human Rights Committee repeatedly recommended to States in its Concluding Observations "extend the right of conscientious objection against mandatory military service to persons who hold non-religious beliefs grounded in conscience"<sup>6</sup>.

The question of "selective" conscientious objection, not to war in general but to a particular war, has not been dealt with very much. However, the United Nations General Assembly, in its resolution 33/165 from 20 December 1978, recognised "the right of all persons to refuse service in military or police forces which are used to enforce apartheid"<sup>7</sup>.

It is also important to note that it is not allowed to exclude groups of people from the right to conscientious objection, for example for having a gun license or other reasons.

## ► Right to conscientious objection at any time – before, during and after service

Another important aspect is when an application for conscientious objection can be made. The general freedom to change one's religion or belief is recognised in Article 18(1) of the Covenant. Thus, the Human Rights Committee recognised in its Concluding Observations on Chile, that "conscientious objection can

1 Human Rights Committee: General Comment 22 on Article 18, 30 June 1993, <http://wri-irg.org/node/6410>

2 See for example *Commission on Human Rights* resolutions 1987/73 from 5 March 1987, 1989/59 from 8 March 1989 (<http://wri-irg.org/node/6409>), 1998/77 from 22 April 1998 (<http://wri-irg.org/node/6136>), 2000/34 from 20 April 2000 (<http://wri-irg.org/node/6418>), 2002/45 from 23 April 2002 (<http://wri-irg.org/node/6415>), and 2004/35 from 19 April 2004 (<http://wri-irg.org/node/6412>)

3 Mr. Yeo-Bum Yoon and Mr. Myung-Jin Choi vs Republic of Korea, Communications Nos. 1321/2004 and 1322/2004 : Republic of Korea. 23/01/2007. CCPR/C/88/D/1321-1322/2004. (Jurisprudence), [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/26a8e9722d0cdadac1257279004c1b4e?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/26a8e9722d0cdadac1257279004c1b4e?OpenDocument)

4 OPINION No.8/2008 (Colombia), 9 May 2008, <http://wri-irg.org/news/2008/colombia-opinion-es.htm>, Opinion No. 16/2008 (Turkey), 8 May 2008, <http://wri-irg.org/node/272>

5 In its judgement in the case *Ülke v. Turkey* (39437/98) from 26 January 2006, the court ruled in favour of Ülke on the grounds of article 3 of the European Convention. However, regarding a violation of article 9, the court said in its judgement "that it is not necessary to give a separate ruling on the complaints under Articles 5, 8 and 9 of the Convention" (see <http://wri-irg.org/node/615>).

6 Human Rights Committee, Concluding observations of the Human Rights Committee: UKRAINE, 28 November 2006, <http://daccessdds.un.org/doc/UNDOC/GEN/G06/458/07/PDF/G0645807.pdf?OpenElement>, accessed 8 January 2009

7 Status of persons refusing service in military or police forces used to enforce apartheid, United Nations General Assembly resolution 33/165 from 20 December 1978, <http://wri-irg.org/node/6428>



occur at any time, even when a person's military service has already begun"<sup>8</sup>. The Commission on Human Rights in its resolution 1998/77 highlighted *"that persons performing military service may develop conscientious objections"*<sup>9</sup>. The European Parliament, in its resolution from 13 October 1989, called *"for the right to be granted to all conscripts at any time to refuse military service, whether armed or unarmed, on grounds of conscience"*<sup>10</sup>. In its 1994 resolution, the European Parliament explicitly called *"on the Member States of the European Union which do not have (or no longer have) conscription and military and civilian service nevertheless to guarantee the fundamental right of conscientious objection"*<sup>11</sup>. Council of Europe Parliamentary Assembly Recommendation 1518 (2001) explicitly recognised *"the right to be registered as a conscientious objector at any time: before, during or after conscription, or performance of military service"* and *"the right for permanent members of the armed forces to apply for the granting of conscientious objector status"*<sup>12</sup>. The Parliamentary Assembly also demanded from member states on 24 March 2006 in a decision on human rights in the Armed Forces to *"introduce into their legislation the right to be registered as a conscientious objector at any time, namely before, during or after implementation of military service, as well as the right of career servicemen to obtain the status of conscientious objector"*<sup>13</sup>.

### ► Impartial decision making procedure

The United Nations Commission on Human Rights has welcomed *"the fact that some States accept claims of conscientious objection as valid without inquiry"*, and called for *"independent and impartial decision-making bodies"* where this is not the case<sup>14</sup>. More concretely, it has expressed its concern that *"the assessment of applications for such service is solely under the control of the Ministry of Defence"*. It therefore recommended *"placing the assessment of applications for conscientious objector status under the control of civilian authorities"*<sup>15</sup>.

### ► Non-punitive substitute service

It first has to be noted that there does not have to be a substitute service. However, if a state decides to require a substitute service from conscientious objectors, then this substitute service has to be compatible with the reasons for the conscientious objection, of civilian character, in the public interest and not of a punitive nature. The term "punitive" covers not only the duration of substitute service, but also the type of service and the conditions under which it is served.

In terms of length of substitute service, the United Nations Human Rights Committee has made clear in *Foin v. France* that any difference in length must be *"based on reasonable and objective criteria, such as the nature of the specific service concerned, or the need for a special training in order to accomplish that service"*<sup>16</sup>. This means that any general difference in length, as is the practice in many countries, is not permitted.

### ► Provision of information

It is obvious that the provision of information about a right is crucial for people to make use of that right. Therefore, the United Nations Commission on Human Rights affirmed in its resolution 1998/77 *"the importance of the availability of information about the right to conscientious objection to military service, and the means of acquiring conscientious objector status, to all persons affected by military service"*<sup>17</sup>. Council of Europe Recommendation No. R (87) 8 says that *"persons liable to conscription shall be informed in advance of their rights. For this purpose, the state shall provide them with all relevant information directly or allow private organizations concerned to furnish that information"*<sup>18</sup>.

8 Human Rights Committee: Concluding observations of the Human Rights Committee: CHILE, 18 May 2007, <http://wri-irg.org/node/6429>

9 Commission on Human Rights: Conscientious objection to military service (Resolution 1998/77), 22 April 1998, <http://wri-irg.org/node/6136>

10 European Parliament: Resolution on conscientious objection and alternative civilian service (Schmidbauer Resolution), 13 October 1989, <http://wri-irg.org/node/6376>

11 European Parliament: Resolution on conscientious objection in the Member States of the Community (Bandrés Molet & Bindi Resolution), 19 June 1994, <http://wri-irg.org/node/6375>

12 Parliamentary Assembly of the Council of Europe: Recommendation 1518 (2001), 23 May 2001, <http://wri-irg.org/node/6379>

13 Parliamentary Assembly of the Council of Europe: Human rights of members of the armed forces, Doc. 10861, 24 March 2006, <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc06/EDOC10861.htm>, accessed 9 January 2009

14 United Nations Commission on Human Rights: Resolution 1998/77 from 22 April 1998, <http://wri-irg.org/node/6136>

15 Concluding observations of the Human Rights Committee: GREECE, 25 April 2005, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.83.GRC.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.83.GRC.En?OpenDocument)

16 Frédéric Foin v. France, CCPR/C/67/D/666/1995, 9 November 1999, <http://wri-irg.org/node/6140>

17 Commission on Human Rights: Conscientious objection to military service (Resolution 1998/77), 22 April 1998, <http://wri-irg.org/node/6136>

18 Recommendation No. R(87)8 of the Committee of Ministers to member states regarding conscientious objection to compulsory



## 2. Practice in European Union member states

From the 27 European Union member states, 10 presently maintain conscription, although of these two – Poland and Sweden – are presently in the process of suspending conscription. However, most countries that did have conscription in the recent past did not just abolish it, but mainly suspended to enforce conscription. In most cases these countries maintain laws and regulations which allow to enforce conscription under certain circumstances, i.e. in situations of war or an emergency. Presently, all countries of the European Union that maintain conscription do provide for the right to conscientious objection in some form. However, this does not mean that this would comply with the international standards set out in the introduction.

*Table 1: Overview: conscription and the right to conscientious objection in the European Union*

Country	Conscription	CO for conscripts		CO for professional soldiers
		before military service	during and after military service	
Austria	Yes	Yes	No	No
Belgium	Suspended	Yes	No	No
Bulgaria	Suspended	Yes	No	No
Cyprus	Yes	Yes	No	No
Czech Republic	Suspended	Yes	No	No
Denmark	Yes	Yes	Yes	No
Estonia	Yes	Yes	No	No
Finland	Yes	Yes	Yes	No
France	Suspended	Yes		No
Germany	Yes	Yes	Yes	Yes
Greece	Yes	Yes	No	No
Hungary	Suspended	Yes	No	No
Ireland	No	n.a.	n.a.	No
Italy	Suspended	Yes		No
Latvia	Suspended	Yes		No
Lithuania	Yes	Yes	No	No
Luxembourg	No	n.a.	n.a.	No
Malta	No	n.a.	n.a.	No
Netherlands	Suspended	Yes	Yes	Yes
Poland	Yes	Yes	No	No
Portugal	No	n.a.	n.a.	No
Romania	No	n.a.	n.a.	No
Slovakia	Suspended	Yes	No	No
Slovenia	No	n.a.	n.a.	No
Spain	Suspended	Yes		No
Sweden	Yes	Yes	Yes	No
United Kingdom	No	n.a.	n.a.	Yes

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A more detailed look is provided in Table 2. However, in some cases, the details as prescribed by law are not known.

In several EU Member States not everyone has a right to conscientious objection. In some countries, such as Greece, certain groups cannot apply for conscientious objector status. In Greece, anyone having a gun license or with a criminal record cannot apply for conscientious objection. In Estonia, the situation is a bit unclear, but the wording of the law makes it likely that conscientious objection is only recognised for religious reasons. The same applies for Lithuania.

In Poland, the right to conscientious objection is only available in times of peace.

In many countries, the right to conscientious objection is not available at any time. As Table 1 shows, this right is often not available during or after military service. Often, there are strict time limits for the submission of an application for conscientious objection, which again limits this right.



Table 2: Practice right to conscientious objection in countries which enforce conscription

	Right to CO	At any time?	Impartial decision making	Substitute service	Other
<b>Austria</b>	✓	x	✓	x	Problem of low payments for CO in substitute service
<b>Cyprus</b>	?	x	x	x	
<b>Denmark</b>	✓	✓	✓	✓	
<b>Estonia</b>	?	x	x	x	Not clear whether substitute service is genuinely civilian
<b>Finland</b>	✓	✓	x	x	Imprisonment of total objectors
<b>Germany</b>	✓	✓	✓	✓	Repeated disciplinary punishment of total objectors
<b>Greece</b>	x	x	x	x	Especially problems with old cases (Lazaros Petromelidis)
<b>Lithuania</b>	?	x	x	x	
<b>Poland *)</b>	✓ (x)	x	x	x	
<b>Sweden **)</b>	✓	✓	✓	-	Presently no substitute service

\*) Conscription will be suspended in 2009

\*\*) Conscription under review, likely to be suspended

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The decision making procedure is another issue of concern. In many countries, an application will be decided by the Ministry of Defence or some administration under the Ministry of Defence. While in Finland for example all applications are more or less automatically granted without examination, and therefore it does not create a problem, in countries where there is some examination of the reasons given for conscientious objection, this is much more problematic. In Greece, non-religious conscientious objectors for example have difficulties getting recognised by the Ministry of Defence. In Poland, the rate of accepted CO applications is low, compared to other countries. Only about 60% of CO applications are granted<sup>19</sup>.

Problematic is especially the issue of substitute service for conscientious objectors. In most countries – with the exception of Denmark and Germany – substitute service is longer than military service, sometimes considerably longer. The European Committee on Social Rights complained about the length of substitute service in the cases of Cyprus<sup>20</sup>, Estonia<sup>21</sup>, Greece<sup>22</sup>, and Finland<sup>23</sup>. Also the United Nations Human Rights Committee has repeatedly complained about the length of substitute service<sup>24</sup>.

While the European Committee for Social Rights considers a substitute service of 1.5 times the length of military service as in compliance with the European Social Charta, the United Nations Human Rights Committee also considers a substitute service of 1.5 times the length of military service as punitive in length<sup>25</sup>.

19 The Right to Conscientious Objection in Europe, Quaker Council for European Affairs, 2005, <http://wri-irg.org/node/4302/revisions/4372/view>

20 European Committee of Social Rights: Conclusions 2008 – Volume 1 (Albania, Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Ireland, Italy), [http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/Year/2008Vol1\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/Year/2008Vol1_en.pdf)

21 European Committee of Social Rights: Conclusions 2008 – Volume 1 (Albania, Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Ireland, Italy), [http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/Year/2008Vol1\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/Year/2008Vol1_en.pdf)

22 European Committee of Social Rights: Conclusions XVIII-1 (Greece), Articles 1, 12, 13, 16 and 19 of the Charter, 2006, [http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/GreeceXVIII1\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/GreeceXVIII1_en.pdf)

23 European Committee of Social Rights: Conclusions 2008 – Volume 1 (Albania, Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Ireland, Italy), [http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/Year/2008Vol1\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/Year/2008Vol1_en.pdf)

24 See for example: Concluding observations of the Human Rights Committee: LITHUANIA, 4 May 2004, <http://wri-irg.org/node/6473>; Concluding observations of the Human Rights Committee: FINLAND, 2 December 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/G04/449/95/PDF/G0444995.pdf?OpenElement>; Concluding observations of the Human Rights Committee: POLAND, 2 December 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/G04/450/09/PDF/G0445009.pdf?OpenElement>

25 Concluding observations of the Human Rights Committee: POLAND, 2 December 2004, <http://daccessdds.un.org/doc/UNDOC/GEN/G04/450/09/PDF/G0445009.pdf?OpenElement>





In some European Union Member states conscientious objectors face prosecution and imprisonment. In the case of Greece, this is especially case for some cases of conscientious objectors going back to the time before Greece introduced the right to conscientious objection (i.e. the case of Lazaros Petromelidis<sup>26</sup>), or for conscientious objectors who are not recognised.

In Finland, total objectors, who refuse substitute service for a variety of reasons, among them often the punitive length of substitute service, are routinely imprisoned for half the time they would have had to serve. According to the Union of COs Finland, there are about 60-80 cases every year.

In Germany, total objectors face repeated disciplinary punishment by the military authorities, often 3-4 terms of imprisonment up to a total of 63 days. According to a decree of the Ministry of Defence from 21 April 2008<sup>27</sup>, total objectors should not be released from the military before they have not served at least two arrests of 21 days each. This decree is a clear violation of Article 14, paragraph 7 of the International Covenant on Civil and Political Rights, which prohibits the repeated punishment for the same offence<sup>28</sup>.

### 3. Conscientious objection for professional soldiers

As stated in the overview, only three European Union Member states – Germany, the Netherlands, and the United Kingdom – recognise the right to conscientious objection for professional soldiers.

#### Countries without the right to conscientious objection for professional soldiers

In countries where professional soldiers do not have the right to conscientious objection, it is likely that those wishing to leave the Armed Forces for reasons of conscience might seek other ways to get a discharge. However, these other ways rarely constitute a right to be discharged, especially in situations of war or an emergency.

The Greek case of *Giorgios Monastiriotis*<sup>29</sup>, who initially signed up to the Greek navy on a five year contract, highlights the problems. In May 2003 *Giorgos Monastiriotis* refused to embark with the crew of the battleship "Navarino" on a mission to the Persian Gulf. He declared his immediate resignation from the Navy instead. The Navarino was sailing to the Persian Gulf as part of operation "Enduring Freedom". *Giorgos Monastiriotis* gave the following statement prior to his refusal in May 2003: "*Acting on the basis of my conscience, I refuse to take part or contribute by any means in the relentless slaughter of the Iraqi people. I refuse to take part in a war that is not ended, as even now after its official end people and among them many children are being killed. Even if this war is officially finished, many more are to come, as war is necessary for the expansion of the dominance of the ruling powers. I declare my immediate resignation from the Hellenic Navy, which is a mechanism that promotes inhuman practices through orders and hierarchy and acts as a means of extortion and repression of the movement and the uprisings of the people. My refusal is also the minimal act of solidarity due to the Iraqi people and to the peaceful sentiments of the Greek people.*"

As Greece does not recognise the right to conscientious objection for professional soldiers, *Giorgios Monastiriotis* had no other options than to simply declare his conscientious objection. What followed were several trials and prison sentences, and also new call-ups to military service<sup>30</sup>. *Giorgios Monastiriotis* has been sentenced to 24 months' imprisonment, suspended for three years, on 31 October 2006, and even today has still an open case for desertion, following a third call-up to military service<sup>31</sup>.

The situation is slightly different in Germany, the Netherlands, and the United Kingdom, the three countries that recognise the right to conscientious objection for professional soldiers. However, in these countries too the situation is not without problems.

26 For an overview of the case, see <http://wri-irg.org/node/4053>.

27 Vorzeitige Entlassung von Grundwehrdienstleistenden (GWDL)/freiwilligen zusätzlichen Wehrdienst Leistenden (FWDL) gemäß § 29 Abs. 1 Satz 3 Nr. 5 und Abs. 4 Nr. 2 des Wehrpflichtgesetzes, [http://www.kampagne.de/Recht/Dokumente/TKDV\\_Erlass.php](http://www.kampagne.de/Recht/Dokumente/TKDV_Erlass.php), accessed 14 January 2009

28 See also Human Rights Committee: General Comment 32 on Article 14, CCPR/C/GC/32, 23 August 2007, <http://daccessdds.un.org/doc/UNDOC/GEN/G07/437/71/PDF/G0743771.pdf?OpenElement>; United Nations Working Group on Arbitrary Detention: OPINION No. 24/2003 (ISRAEL), 28 November 2003, <http://wri-irg.org/node/6481>, OPINION No. 36/1999 (TURKEY), 2 December 1999, <http://wri-irg.org/node/1600>

29 An overview of the case is available at <http://wri-irg.org/node/5017>

30 War Resisters' International: Conscientious objection to military service in Greece: Human Rights shortfalls, 1 February 2005, <http://wri-irg.org/news/2005/greece05a-en.htm>

31 Emails Alexia Tsouni, Association of Greek Conscientious Objectors, 15 January 2009



## Netherlands

In the Netherlands, the legal basis for the right to conscientious objection for professional soldiers is only a decree of the Ministry of Defence from 1 January 1994<sup>32</sup>, which extends the law on conscientious objection, which only applies to conscripts, also to professional soldiers. It is important to note that according to the Ministry of Defence in 2004, professional soldiers who have a conscientious objection to particular campaigns of the armed forces, for example deployment in Iraq, do not have the right to claim conscientious objection to participation in these particular campaigns<sup>33</sup>.

In practice, there have been several trials against soldiers refusing to deploy to Afghanistan. In 2007 the appeal court in Arnhem acquitted a soldier who refused to deploy to Afghanistan, after he had initially been sentenced to two months imprisonment. There was also a second case of refusal, which led to a prosecution. However, a second person has also been finally acquitted in December 2007<sup>34</sup>.

Presently, War Resisters' International is not aware of any statistics on the number of applications for a discharge as conscientious objector in the Netherlands.

## Germany

In Germany, the right to conscientious objection applies equally to conscripts and professional soldiers.

*Table 3: Conscientious objection – applications from soldiers since 2001*

	2001	2002	2003	2004	2005	2006
Conscripts /voluntary military service	2386	2242	1669	1861	1568	2203
Contract soldiers	62	79	71	73	70	65
Professional soldiers	0	1	0	2	1	1
Total	2448	2322	1740	1936	1639	2269

Source: Antwort des Parlamentarischen Staatssekretärs Thomas Kossendey, 9 May 2007<sup>35</sup>

Problematic is especially that the military authorities regard a release from the armed forces which is based on conscientious objection as a release on someone's own initiative. This means that a professional soldier who has been recognised as a conscientious objector needs to pay back the costs of any courses that (s)he has followed in the military and that have a civilian use. This can lead to a considerable financial burden, almost making it impossible to leave the Armed Forces.

The case of Florian Pfaff highlighted another problem with the right to conscientious objection. However, as Florian Pfaff did not claim conscientious objection, but refused an order that he regarded as illegal, his case falls more under the category of the right to refuse illegal orders. In its judgement, the Bundesverwaltungsgericht however acquitted Florian Pfaff based on freedom of conscience. The Bundesverwaltungsgericht stated in its judgement: "A soldier does not have to carry out an order, on the ground that it is unreasonable, if he can invoke protection of the fundamental right to freedom of conscience (Article 4(1) of the Basic Law). The protection afforded by Article 4(1) of the Basic Law is not overridden by the fundamental right to recognition as a conscientious objector (Article 4(3) of the Basic Law)." And: "If (...) the soldier still maintains that his conscience will not allow him to carry out the order, and if this is understandable in the sense described earlier, then a compromise must be reached which protects both sides (use elsewhere, transfer, reassignment, etc.)."<sup>36</sup>

32 Aanwijzing inzake Gewetensbezwaren militaire dienst, 1 January 1994, [http://mpbundels.mindef.nl/31\\_serie/31\\_112/31\\_112\\_1150.htm](http://mpbundels.mindef.nl/31_serie/31_112/31_112_1150.htm), accessed 15 January 2009

33 Information provided by the Netherlands Ministry of Defence, November 2004, referenced in Quaker Council for European Affairs: The Right to Conscientious Objection in Europe, 2005, <http://wri-irg.org/co/rtba/netherlands.htm>, accessed 11 August 2008.

34 War Resisters' International: World Survey Conscientious Objection and Recruitment, Netherlands, 23 October 2008, [http://wri-irg.org/programmes/world\\_survey/reports/Netherlands](http://wri-irg.org/programmes/world_survey/reports/Netherlands)

35 Antwort des Parlamentarischen Staatssekretärs Thomas Kossendey, 9 May 2007: Kriegsdienstverweigerung – Antragstellungen von Soldaten seit 2001 nach Statusgruppen und insgesamt, <http://dip.bundestag.de/btd/16/053/1605317.pdf>, accessed 15 January 2009

36 Notes on the acquittal of a German military officer who refused to carry out a military order in connection with the Iraq War, <http://wri-irg.org/news/2006/pfaff-en.htm>



## United Kingdom

In the United Kingdom, each of the three branches of the Armed Forces has its own regulations governing the right to conscientious objection. Especially problematic is that the regulations governing the right to conscientious objection are not in the public domain, and information is difficult to obtain by members of the public, and also by members of the Armed Forces. In addition, decision making on an application for conscientious objection in the first instance is by the respective branch of the Armed Forces itself, and not by an independent body. Only the appeal body – the Advisory Committee on Conscientious Objectors – is an independent body.

The regulations are:

- Instruction 006 – Retirement or Discharge on Grounds of Conscience for the Army, including the Territorial Army;
- AP3392 Vol 5. Leaflet 113, Procedure for Dealing with Conscientious Objectors within the Royal Air Force for the Air Force;
- Personnel, Legal, Administrative and General Orders 0801, Application for Discharge on Grounds of Conscientious Objection for the Navy.

While the application procedure is similar for the three branches of the Armed Forces, there are also important differences.

It has to be pointed out that for all three services an application for discharge on grounds of conscience does not prevent deployment. During the time the application is being processed, the applicant remains a member of the Armed Forces with all duties this implies. There is no right to ask for service without arms during the processing of the CO application.

The regulations for the Royal Air Force also do not allow an application for conscientious objection from a soldier who is absent without leave or a deserter, or subject of outstanding disciplinary action. This is problematic as it is not uncommon for conscientious objectors to go absent without leave for a short period, as especially experience from the United States of America shows.

There are very few cases of conscientious objection in the UK Armed Forces<sup>37</sup>. One explanation for this is the lack of information. This lack of access to and knowledge about the right to conscientious objection has also been an issue in the case of reservist Leading Aircraftman Mohisin Khan, who went absent without leave when recalled for service. He claimed that he was not aware of the right to conscientious objection. In its judgement, the High Court says *"It is, however, true that the call-out materials in this case, like the 1997 Regulations, do not mention conscientious objection expressly. In that respect, it would seem that the information provided to the recalled reservist could be improved"*<sup>38</sup>.

According to military law expert Gilbert Blades, who represents soldiers at courts martial, the numbers leaving because of Iraq are often obscured as they were not counted as conscientious objectors<sup>39</sup>.

Two high-profile cases of Iraq war resisters underline this point. Benjamin Griffin, a former SAS soldier, refused to return to Iraq while on leave in March 2005 after three month of service in Baghdad. Unexpectedly, he was discharged from the army *"with a glowing testimonial"*<sup>40</sup>.

Malcolm Kendall-Smith, a medical officer in the Royal Air Force, fared less well. He refused to serve in Iraq in July 2005, and was subsequently court-martialed, and sentenced to eight month imprisonment, plus a discharge from the Air Force<sup>41</sup>.

Both cases are again on the borderline to the right to refuse illegal orders.

37 Numbers have been obtained under the Freedom of Information Act by War Resisters' International, and also by the Quakers. However, these numbers do not add up. According to the information obtained by War Resisters' International, only six individuals (3 RAF personnel, 3 Navy personnel) have applied for discharge on the grounds of conscientious objection since 2000. Of these cases, five were successful (3 RAF personnel, 2 Navy personnel). It is interesting that according to information obtained by David Gee in March 2007, from April 2001 to March 2006 there had been four successful applications, all from Air Force personnel, and none for the Navy or Army.

38 Mohisin Khan v RAF, [2004] EWHC (2230), paragraph 57, <http://www.hmcourts-service.gov.uk/judgmentsfiles/j2822/khan-v-raf.htm>

39 At least 1,000 UK soldiers desert, BBC News, 28 May 2006, <http://news.bbc.co.uk/1/hi/uk/5024104.stm>, accessed 1 October 2008

40 SAS man quits in protest at 'illegal' Iraq war, The Guardian, 13 March 2006, <http://www.guardian.co.uk/Iraq/Story/0,1729553,00.html>, accessed 1 October 2008

41 RAF doctor jailed over Iraq refusal, The Guardian, 13 April 2006, <http://www.guardian.co.uk/Iraq/Story/0,1753241,00.html>, accessed 1 October 2008





## 4. Conclusions

While all European Union Member states that practice conscription recognise the right to conscientious objection for conscripts, the implementation of this right is in most cases not compliant with the international standards as set out by United Nations bodies, the Council of Europe, and the European Parliament.

Only very few countries accept an application for conscientious objection at any time – before, during and after military service – and in many cases the decision making procedure is not impartial. Also, in many cases the substitute service is of punitive length.

Regarding the right to conscientious objection for professional soldiers, the situation is even worse. Only three out of the 27 European Union Member states recognise the right to conscientious objection for professional soldiers. Also in these three countries, there are still a range of problems in practice.